

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

SECUREONE, INC., a Tennessee
corporation,

Respondent

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by SecureOne, Inc. of Nashville, Tennessee ("Respondent") to Paul G. Summers, Attorney General and Reporter for the State of Tennessee ("Attorney General") and Mark Williams, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include offering home security systems to Tennesseans at "no cost", "\$0.00" or "free" without clearly and conspicuously disclosing monetary and other restrictions in the initial offer. Additionally, Respondent promoted a "free" security system and informed consumers that it was only available "if you respond within the next 48 hours . . .", but there was in fact no 48 hour limitation on the offering. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et*

seq. (the "Act").

B. By entering into this Assurance, Respondent does not admit any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation and the investigation of the Attorney General.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

I. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, clarification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

II. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

III. BUSINESS PRACTICES

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

3.1 Respondent shall fully comply with Tenn. Code Ann. § 47-18-120 when offering a prize, gift, award, incentive promotion or thing of value to a consumer. (As used in this Assurance, "consumer" shall mean any natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however structured.)

3.2 When offering a free item, prize, gift, award, incentive promotion or thing of value, Respondent shall clearly, conspicuously and affirmatively disclose the approximate verifiable retail price of each prize, gift, award, incentive promotion or thing of value offered. (As used in this Assurance, "prize" means

prize, gift, award, incentive promotion or any thing of value. "Prize" includes, but is not limited to, any thing of value offered in a sweepstakes, contest, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses.) Without limiting the scope of this section, for example, if the Respondent offers a free security system or installation, Respondent must clearly, conspicuously and affirmatively disclose the verifiable retail value. Additionally, Respondent shall have substantiation for the approximate verifiable retail value as required by Tenn. Code Ann. §§ 47-18-120(c)(1)(D) and (E). Such substantiation shall be provided in writing to the Attorney General within five (5) business days of a written request for the substantiation.

3.3 Respondent shall be prohibited from representing, directly or indirectly, that an offer, promotion or advertisement is of limited duration, if such is not the case. Without limiting the scope of this provision, Respondent shall be specifically prohibited from stating "limited time", "hurry respond within (specified time frame)" or "if you respond within the next 48 hours" (or terms or phrases of similar import) in any promotion if the offer does not in fact have a limited time duration.

3.4 Respondent shall be prohibited from directly or indirectly using the term "selected" or otherwise indicate that a person is part of a "special" or select group receiving a free item, prize, gift or award, if that person has not been selected or is not part of a select or special group.

3.5 Respondent shall be prohibited from representing, directly or indirectly, that a person has won or will receive certain items free of charge if receipt of the prize or free product or service is conditioned upon: (a) listening to or observing a sales promotion, (b) making a purchase, or (c) incurring any monetary obligation, unless it is clearly and conspicuously disclosed, at the time of the initial offer of the prize, that an attempt will be made to induce the consumer to incur a monetary obligation, including the amount of that monetary obligation, as required by Tenn. Code Ann. § 47-18-120(c)(1)(C).

3.6 In an initial advertisement or offer, Respondent shall be required to affirmatively disclose the types and categories of restrictions, qualifications, or other considerations, that must be satisfied before the consumer or person is entitled to receive or use the prize, free item or product offered or promoted as required by Tenn. Code Ann. § 47-18-120(c)(1)(H).

3.7 Respondent shall be required to affirmatively disclose, in the initial advertisement or offer, the approximate total of all costs, fees or other monetary obligations that must be satisfied before the person is entitled to receive or use the prize, free item or product offered or promoted as required by Tenn. Code Ann. § 47-18-120(c)(1)(I).

3.8 Respondent shall be required in the initial advertisement or offer, or at a minimum before an offer can be accepted, to clearly, conspicuously and affirmatively disclose verbally or in writing, and upon request in writing, at least the following:

(A) A general description of the types or categories of restrictions, qualifications or other conditions that must be satisfied before the consumer or person is entitled to receive or use

the prize or product or service offered;

(B) The refund, exchange, return or cancellation policies in regard to any promotional offer; and

(C) The approximate total of costs, fees or other monetary obligations that must be satisfied before the person is entitled to receive or use the prize, product or service offered.

3.9 Respondent shall be prohibited from directly or indirectly using the phrase "essential security system", "essential package" (or terms or phrases of similar import) without affirmatively disclosing in the initial offer or advertisement each of the products or services actually included within the system or package offered.

3.10 Respondent shall be prohibited from directly or indirectly using terms or phrases which falsely represent that a consumer's neighborhood is unsafe, if such is not the case.

3.11 Respondent shall be prohibited from directly or indirectly using terms or phrases which infer that tests have been or will be conducted in a specific area to confirm the use or effectiveness of Respondent's products in that area if such is not the case.

3.12 Respondent shall be prohibited from directly or indirectly using terms or phrases which indicate that Respondent's alarms can be heard from outside the home of a consumer, if such is not the case.

3.13 Respondent shall be required to fully comply with the Federal Trade Commission, Guide Concerning Use of the Word "Free" and Similar Representations Guidelines, 16 C. F. R. 251.

3.14 Respondent shall be required to conduct and provide training sessions and a written training manual regarding the requirements of this Assurance, including full compliance with Tenn. Code Ann. § 47-18-120 and the Federal Trade Commission "Free" Guidelines, to all of Respondent's employees and/or representatives who are responsible for and/or involved with the selling and/or promoting of security systems in Tennessee. Training sessions shall specifically include information designed to educate all such employees about the requirements of this Assurance, including full compliance with Tenn. Code Ann. § 47-18-120, and to ensure that they are aware of all of the requirements, including, but not limited to, the obligation to provide full and complete disclosures in accordance with the Tenn. Code Ann. § 47-18-120 and this Assurance to interested consumers. These training sessions shall also specifically include information regarding Respondent's policy prohibiting the offering of free products or other prizes without all clear and conspicuous disclosures under Tenn. Code Ann. § 47-18-120. Within ninety (90) days of execution of this Assurance, Respondent shall provide to the Attorney General a copy of all training materials provided to its employees and an affidavit stating and certifying that the employee training session and materials have been provided to all employees responsible for and/or involved in the selling or promoting of security systems to consumers in Tennessee along with a copy of Respondent's procedure for ensuring that all new employees receive appropriate training and the training materials in

the future prior to engaging in sales activities on behalf of the Respondent. "Training materials" includes, but is not limited to, correspondence, memoranda, company literature and/or brochures which provide information regarding the sale of Respondent's home security systems.

3.15 Respondent shall be required to review any employee's record if Respondent receives two or more complaints or other reliable information indicating that an employee has made any misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondent shall adopt a policy that any misrepresentations to consumers and any conduct which results in a violation of this Assurance will result in appropriate employee discipline. Further Respondent shall maintain records of any such findings, disciplinary action or misconduct for a period of five (5) years. Said records shall be made available to the Attorney General within two days of a written request. The records shall be provided to the Office of the Attorney General in Nashville, Tennessee within five (5) business days of a request. Respondent has the option of reporting any violations and disciplinary actions taken to the Attorney General.

3.16 Respondent shall be required to have a company policy, rule or requirement prohibiting the use or distribution of unapproved or unauthorized promotional materials, including advertisements by its employees. Further, Respondent shall be required to take appropriate steps to fully enforce that policy, rule or requirement including, in Respondent's discretion, disciplinary actions for any employee who violates such policy.

IV. RESTITUTION

4.1 Respondent represents and warrants, to the best of its knowledge, that no consumers have complained to Respondent about its offering of "no cost", "free" or "\$0.00" security systems, installations or other equipment or items indicating that the consumer did not understand the monetary and other conditions, restrictions and limitations on the offer. Respondent understands that the State expressly relies upon this representation; if it is false, misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

V. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

5.1 Respondent shall pay the sum of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorneys' Fees" on the day of execution of this Assurance.

VI. PAYMENT TO GENERAL FUND

6.1 Respondent shall pay the sum of Three Thousand and 00/100 Dollars (\$ 3,000.00) to the State of

Tennessee as a payment to the General Fund. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the AState of Tennessee - General Fund" on the day of execution of this Assurance.

VII. CONSUMER EDUCATION FUNDING

7.1 Respondent shall pay the sum of Five Hundred and 00/100 Dollars (\$500.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

VIII. MONITORING AND COMPLIANCE

8.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within two (2) weeks of the request, or such other time as is mutually agreeable in writing to the parties, at the Office of the Attorney General, Consumer Protection Division, 425 Fifth Avenue North, 2nd Floor, Nashville, Tennessee, 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule. Any disagreements regarding whether information requested pursuant to this paragraph is related to compliance with this Assurance can be resolved by either party applying to the court for construction or clarification pursuant to paragraph 1.1.

8.2 The Respondent acknowledges and understands the State of Tennessee may test shop the Respondent for the purpose of confirming compliance with this Assurance and state law. Further, Respondent understands that the State's test shoppers will not disclose that they are representatives of the State of Tennessee when making contact with Respondent and the State may record any and all aspects of the communications or contacts in audio or video form without notice to the Respondent.

IX. PRIVATE RIGHT OF ACTION

9.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

X. PENALTY FOR FAILURE TO COMPLY

10.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including, but not limited to, contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

10.3 In the event of a subsequent action, Respondent does not waive any defense it may have to such actions.

XI. REPRESENTATIONS AND WARRANTIES

11.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offers, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

11.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

11.3 Respondent shall not effect any change in its form of doing business or its organizational identity as a method of avoiding the terms and conditions set forth in this Assurance.

11.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

11.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

11.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, and all employees or other persons who are involved in Respondent's sales and marketing practices in the State of Tennessee.

11.7 Respondent warrants and represents that SecureOne, Inc. is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt,

if the State so elects.

11.8 SecureOne, Inc. represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

11.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

11.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

11.11 This document shall not be construed against the Adrafter" because both parties participated in the drafting of this document.

11.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

11.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent.

11.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

11.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

11.16 Upon approval of this Assurance by the Court, the Attorney General and the Division agree not to pursue any claims relating to the facts set forth in paragraph A of this Assurance occurring prior to entry of this Assurance that they could commence under the Tennessee Consumer Protection Act of 1977.

XII. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

12.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

XIII. FILING OF ASSURANCE

13.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

XIV. APPLICABILITY OF ASSURANCE TO RESPONDENT

14.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to activities within the State of Tennessee by it, each of its officers, directors, managers, employees, subsidiaries, affiliates, parents, related entities or other entities it controls, manages or operates.

XV. NOTIFICATION TO STATE

15.1 Any notices required to be sent by this Assurance shall be sent by United States mail, certified mail return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Jennifer L. Rawls
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
425 Fifth Ave. North, 2nd Floor
Nashville, Tennessee 37243
(615) 741-2614

For Respondent:

Michael Sanford
SecureOne, Inc.
510 Linbar Drive, Suite 155
Nashville Tennessee 37211

Courtesy Copy:

Ted s. Biderman, Esq.
Miller & Martin, LLP
1000 Volunteer Building
823 Georgia Avenue
Chattanooga, TN 37402

15.2 For three (3) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General by providing a copy of any filings required to be sent to the Tennessee Alarm Board or the Tennessee Secretary of State reflecting any changes in the Respondent's corporate name or names under which it does business or advertises to the public. Further, within one (1) week of a written request, Respondent will inform the Attorney General of any name changes or any names under which it

does business or advertises to the public in Tennessee that have occurred after entry of this Assurance.

XVI. COURT COSTS

16.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed.